

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

**SOUTHERN BOSTON MANAGEMENT CORP.,**

**Plaintiff,**

**- against -**

**BP PRODUCTS NORTH AMERICA INC., et al.,**

**Defendants.**

**MEMORANDUM  
OPINION & ORDER**

**03 Civ. 6845 (RMB) (RLE)**

**RONALD L. ELLIS, United States Magistrate Judge:**

**I. BACKGROUND**

Plaintiff, Southern Boston Management Corp. (“Southern Boston”), owner of the premises at 1776 Southern Boulevard, Bronx, New York, brought this action against BP Products North American, Inc., and Delta Environmental Consultants, Inc. (“defendants”), for trespass and conversion for entering the premises without authorization and removing underground storage tanks, pipes, pumps, and dispensers. On December 7, 2005, defendants filed a notice of motion to compel a third-party, Southern Boulevard Realty Management, LLC (“Southern Boulevard”), to comply with a subpoena duces tecum served on December 22, 2004. The motion is **DENIED** without prejudice.


**II. DISCUSSION**

Defendants served the subpoena at issue upon Southern Boulevard’s managing agent, but the motion to compel was served upon Abraham N. Kleinman (“Kleinman”). According to defendants, Kleinman contacted them after the subpoena was issued and told counsel that he was Southern Boulevard’s attorney, and that his client would produce the documents requested. Southern Boulevard failed to produce the documents. Counsel for defendants left messages for

Kleinman but received no response. Plaintiff also failed to file a response to the motion with the Court. The Court contacted Kleinman in early January 2006, to ascertain whether his client had received the motion and intended to respond. Kleinman informed the Court that he did not represent Southern Boulevard in the instant matter. The Court then contacted defendants' counsel on January 10 concerning the representations by Kleinman and the apparent need to serve the motion directly upon Southern Boulevard. Defendants' counsel said the issue would be addressed. When no verification of service to Southern Boulevard was received, the Court called counsel on March 3. Although counsel's office indicated that a response call would occur in a few days, the Court was required to make follow-up calls on March 20, and on April 10. Each time the Court was informed that someone would call back. No return calls on the issue or documents verifying service of the motion to Southern Boulevard have been received.

Federal Rule of Civil Procedure 37(a) allows for an order compelling disclosure or discovery upon application to the Court, but requires "reasonable notice to other parties and all persons affected thereby." Here, where the movant has been unable to assure the Court that the third-party against whom the motion is sought has received such "reasonable notice," the motion cannot go forward. Defendants' motion is **DENIED** without prejudice to re-filing, including service to all appropriate parties.

**SO ORDERED this 14th day of July 2006**  
**New York, New York**

  
**The Honorable Ronald L. Ellis**  
**United States Magistrate Judge**